

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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September 19, 2006

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RE: William and Betty Gant v. New Jersey Manufacturers Insurance Co.
C.A. No. 04C-08-232 WCC

Dear Counsel:

The trial of the above-captioned matter is scheduled for this upcoming Monday, September 25, 2006. Although the matter has proceeded to arbitration at the request of the defendant, and an award of more than twice the policy limit was decided by the arbitrator, the parties appear to be unable to resolve their differences and resolve this case. As such, the Court will now address the remaining issue which it had left unresolved in anticipation that the case might settle.

The issue is whether the laws of Delaware or New Jersey will apply to the determination of damages specifically relating to prejudgment interest and the introduction of special damages in the underlying tort action. Before addressing this issue, the Court first will deny the defendant's request to dismiss this litigation so the case can be transferred to New Jersey. While clearly New Jersey would have been

an appropriate forum to bring this dispute between a New Jersey resident and a New Jersey based insurance company, the accident did occur in Delaware, and this fact provides a vehicle for the plaintiff to choose the jurisdiction it would prefer to litigate this dispute. This is a different issue from the choice of law matter that the Court will address below, and there has been no motion or argument that the facts of this case would support a *forum non conveniens* motion. The defendant's original basis to support dismissal (the failure to arbitrate in New Jersey) is now moot, and there is no realistic new basis to support a transfer at this time. Therefore, the defendant's renewed motion to dismiss is denied.

With the Delaware Supreme Court decisions in *Travelers Indemnity Co. v. Lake*¹ and *Turner v. Lipschultz*,² there is no question now that both contract and tort choice of law issues are to be resolved by applying the "most significant relationship" test as set forth in *Restatement (Second) of Conflicts*. When the principles found in §145 are applied to the facts of this case, even the plaintiff agrees that disputes relating to the insurance contract between the parties would be controlled by New Jersey law.³ The parties reside or are headquartered there, the contract was executed in New Jersey, and there is really no Delaware connection to the contractual obligation of the parties. However, the conflict issue is not totally resolved by this decision.

This case presents a mixed issue of contract and tort. While the litigation is brought to force the defendant to pay benefits under the insurance contract, the underlying basis creating this obligation is tort-based. Therefore, for issues unique to the tort litigation, a separate Reinstatement analysis must occur that may or may not end in the same result. The relative importance of the four factors may change

¹ 594 A.2d 38 (Del. 1991).

² 619 A.2d 912 (Del. 1992).

³ The contacts the Court must consider, pursuant to Restatement (Second) §145(2), are:
(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
(d) the place where the relationship, if any, between the parties is centered.

with respect to a particular issue.⁴ In addition, in relation to tort actions, § 146 of the Reinstatement (Second) creates a presumption that the laws of the state where the injury occurred will control unless some other state has a more significant relationship.⁵ The commentary to this section also notes that the state where the accident occurs will normally be the dominant state in matters involving tort “since the two principal elements of tort, namely, conduct and injury” have occurred there.⁶

When the Court considers the four factors found in § 145, it finds that the presumption of § 146 has not been overcome in this case simply because the principals reside in New Jersey and the contractual relationship was developed there. The injuries and the conduct here has occurred in Delaware, and the Court finds this State’s interest in controlling its litigation in this area is controlling and is not overcome by the other factors found in § 145. Therefore, the Court finds Delaware law would apply to issues regarding the admissibility of evidence and the appropriate damages to award.

Having made these rulings, the Court now needs to decide how they apply to the two areas of dispute, prejudgment interest and the recovery of special damages. The issue of special damages is the easiest to decide. This specifically relates to the injuries claimed and is an essential element of the actual damages that resulted from the accident. As such, the Court finds that, regarding the issue of special damages, Delaware law will apply. However, the Court views the issues of prejudgment interest in a different light. This is not damages associated with the accident itself, but is damages associated with the liable party not paying promptly.⁷ The Court views this as a contract issue, and under the rulings made above, finds in regards to prejudgment interest, New Jersey law will apply.

⁴ Rest.2d Confl. §145(2).

⁵ Rest.2d Confl. §146. (“In an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in §6 to the occurrence and the parties, in which event the local law of the other state will be applied.”)

⁶ Rest.2d Confl. §146, Comment d. (“The state where the defendant’s conduct occurs has the dominant interest in regulating it and in determining whether it is tortious in character.”).

⁷ *Cooper v. Ross & Roberts, Inc.*, 505 A.2d 1305 (Del. Super. Ct. 1986).

I believe this resolves all the outstanding issues presently before the Court. It appreciates there were some expert issues raised just before the first trial which, unless otherwise advised by counsel, the Court will assume have been resolved by the time that has elapsed since the first trial was rescheduled.

Sincerely yours,

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Aimee Bowers, Case Manager